

Adopted	Rejected
---------	----------

COMMITTEE REPORT

YES:	9
NO:	3

MR. SPEAKER:

*Your Committee on Public Policy, to which was referred House Bill 1118, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-33-19-6, AS ADDED BY P.L.227-2007,
- 4 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2008] : Sec. 6. The division shall, on behalf of the department
- 6 of state revenue or the alcohol and tobacco commission, conduct a
- 7 license revocation action against a licensed entity for any revocation
- 8 action authorized by any of the following statutes:
- 9 (1) IC 6-2.5-8-7(g).
- 10 (2) ~~IC 7.1-3-18.5-5(e).~~ **IC 7.1-3-18.5.**
- 11 (3) IC 7.1-3-23-2(b).
- 12 (4) IC 7.1-3-23-5 with respect to a violation of IC 35-45-5-3,
- 13 IC 35-45-5-3.5, or IC 35-45-5-4."
- 14 Page 2, line 19, delete "The establishment meets the requirements,
- 15 if any," and insert: **"The sale of alcohol on the premises represents**

1 **a percentage of annual gross sales of twenty-five percent (25%) or**
 2 **less of all items sold on the premises excluding gasoline and oil**
 3 **products.".**

4 Page 2, delete lines 20 through 22.

5 Page 3, between lines 14 and 15, begin a new paragraph and insert:

6 "SECTION 7. IC 7.1-2-3-10, AS AMENDED BY P.L.227-2007,
 7 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2008]: Sec. 10. (a) The commission shall have the power to
 9 investigate the violation of a provision of this title and of the rules and
 10 regulations of the commission and to report its findings to the
 11 prosecuting attorney or the grand jury of the county in which the
 12 violation occurred, or to the attorney general.

13 (b) The commission shall enter a memorandum of understanding
 14 with the Indiana gaming commission authorizing the commission's
 15 unlawful gaming enforcement division to conduct revocation actions
 16 resulting from suspected violations of IC 35-45-5-3, IC 35-45-5-3.5, or
 17 IC 35-45-5-4 as authorized by the following statutes:

18 (1) ~~IC 7.1-3-18.5-5(e).~~ **IC 7.1-3-18.5.**

19 (2) IC 7.1-3-23-2(b).

20 (3) IC 7.1-3-23-5.

21 (c) A memorandum of understanding entered into under this section
 22 must comply with the requirements of IC 4-33-19-8.

23 (d) The memorandum of understanding required by this section
 24 must be entered into before January 1, 2008."

25 Page 19, line 2, delete "may:" and insert "**may disclose the**
 26 **information:**

27 **(1) to the department of state revenue to verify the accuracy**
 28 **of the amount of annual gross sales of food reported to the**
 29 **commission under subsections (b) and (c); and**

30 **(2) in any administrative or judicial proceeding to revoke or**
 31 **suspend the holder's permit as a result of a discrepancy in the**
 32 **amount of annual gross sales discovered by the department of**
 33 **state revenue.".**

34 Page 19, delete lines 3 through 12.

35 Page 19, between lines 29 and 30, begin a new paragraph and insert:

36 "SECTION 38. IC 7.1-3-8-3, AS AMENDED BY P.L.224-2005,
 37 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2008]: Sec. 3. (a) The holder of a liquor wholesaler's permit

1 shall be entitled to sell liquor at wholesale.

2 (b) A liquor wholesaler shall be entitled to purchase liquor within
3 this state from a person who holds a distiller's permit, a rectifier's
4 permit, or a liquor wholesaler's permit. A liquor wholesaler also may
5 purchase liquor outside this state from the primary source of supply
6 and, from that source, may transport and import liquor into this state.

7 (c) A liquor wholesaler may sell, transport, and deliver liquor only
8 to a person who, under this title, holds a:

- 9 (1) liquor retailer's permit;
- 10 (2) supplemental caterer's permit;
- 11 (3) liquor dealer's permit; or
- 12 (4) liquor wholesaler's permit.

13 The sale, transportation, and delivery of liquor shall be made only from
14 inventory that has been located on the wholesaler's premises before the
15 time of invoicing and delivery, and only in permissible containers and
16 is subject to the rules of the commission fixing the quantity which may
17 be sold or delivered at any one (1) time.

18 **(d) A liquor wholesaler's bona fide regular employees may**
19 **purchase liquor from the wholesaler in an amount not to exceed**
20 **eighteen (18) liters."**

21 Page 26, between lines 21 and 22, begin a new paragraph and insert:

22 "SECTION 51. IC 7.1-3-18.5-5, AS AMENDED BY P.L.227-2007,
23 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2008]: Sec. 5. (a) Subject to subsection (b), the commission
25 may suspend the certificate of a person who fails to pay a civil penalty
26 imposed for violating IC 35-46-1-10; IC 35-46-1-10.2; IC 35-46-1-11.5;
27 or IC 35-46-1-11.7.

28 (b) Before enforcing the imposition of a civil penalty or suspending
29 or revoking a certificate under this chapter, the commission shall
30 provide written notice of the alleged violation to the certificate holder
31 and conduct a hearing. The commission shall provide written notice of
32 the civil penalty or suspension to the certificate holder.

33 (c) Subject to subsection (b), the The commission shall revoke the
34 certificate of a person upon a finding by a preponderance of the
35 evidence that the person has violated IC 35-45-5-3, IC 35-45-5-3.5, or
36 IC 35-45-5-4."

37 Page 29, delete lines 21 through 42.

38 Page 30, delete lines 1 through 11.

Page 30, between lines 34 and 35, begin a new paragraph and insert:

"SECTION 62. IC 7.1-3-20-15.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 15.9. As used in section 16(j) of this chapter, "tavern" means a permit premises:**

(1) that meets the definition of restaurant set forth in IC 7.1-3-20-9 but is used primarily for the serving of alcoholic beverages by the drink to the general public; and

(2) where food service is secondary to the primary use described in subdivision (1):

(A) in the amount of sales; and

(B) in the size of the service area where minors are not permitted.

SECTION 63. IC 7.1-3-20-16, AS AMENDED BY P.L.165-2006, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) A permit that is authorized by this section may be issued without regard to the quota provisions of IC 7.1-3-22.

(b) The commission may issue a three-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant facility in the passenger terminal complex of a publicly owned airport which is served by a scheduled commercial passenger airline certified to enplane and deplane passengers on a scheduled basis by a federal aviation agency. A permit issued under this subsection shall not be transferred to a location off the airport premises.

(c) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a redevelopment project consisting of a building or group of buildings that:

(1) was formerly used as part of a union railway station;

(2) has been listed in or is within a district that has been listed in the federal National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended; and

(3) has been redeveloped or renovated, with the redevelopment or renovation being funded in part with grants from the federal, state, or local government.

1 A permit issued under this subsection shall not be transferred to a
2 location outside of the redevelopment project.

3 (d) The commission may issue a three-way, two-way, or one-way
4 permit to sell alcoholic beverages for on-premises consumption only to
5 an applicant who is the proprietor, as owner or lessee, or both, of a
6 restaurant:

7 (1) on land; or

8 (2) in a historic river vessel;

9 within a municipal riverfront development project funded in part with
10 state and city money. A permit issued under this subsection may not be
11 transferred.

12 (e) The commission may issue a three-way, two-way, or one-way
13 permit to sell alcoholic beverages for on-premises consumption only to
14 an applicant who is the proprietor, as owner or lessee, or both, of a
15 restaurant within a renovation project consisting of a building that:

16 (1) was formerly used as part of a passenger and freight railway
17 station; and

18 (2) was built before 1900.

19 The permit authorized by this subsection may be issued without regard
20 to the proximity provisions of IC 7.1-3-21-11.

21 (f) The commission may issue a three-way permit for the sale of
22 alcoholic beverages for on-premises consumption at a cultural center
23 for the visual and performing arts to a town that:

24 (1) is located in a county having a population of more than four
25 hundred thousand (400,000) but less than seven hundred thousand
26 (700,000); and

27 (2) has a population of more than twenty thousand (20,000) but
28 less than twenty-three thousand (23,000).

29 (g) After June 30, 2005, the commission may issue not more than
30 ten (10) new three-way, two-way, or one-way permits to sell alcoholic
31 beverages for on-premises consumption to applicants, each of whom
32 must be the proprietor, as owner or lessee, or both, of a restaurant
33 located within a district, or not more than five hundred (500) feet from
34 a district, that meets the following requirements:

35 (1) The district has been listed in the National Register of Historic
36 Places maintained under the National Historic Preservation Act
37 of 1966, as amended.

38 (2) A county courthouse is located within the district.

1 (3) A historic opera house listed on the National Register of
2 Historic Places is located within the district.

3 (4) A historic jail and sheriff's house listed on the National
4 Register of Historic Places is located within the district.

5 The legislative body of the municipality in which the district is located
6 shall recommend to the commission sites that are eligible to be permit
7 premises. The commission shall consider, but is not required to follow,
8 the municipal legislative body's recommendation in issuing a permit
9 under this subsection. An applicant is not eligible for a permit if, less
10 than two (2) years before the date of the application, the applicant sold
11 a retailer's permit that was subject to IC 7.1-3-22 and that was for
12 premises located within the district described in this section or within
13 five hundred (500) feet of the district. A permit issued under this
14 subsection shall not be transferred. The cost of an initial permit issued
15 under this subsection is six thousand dollars (\$6,000).

16 (h) The commission may issue a three-way permit for the sale of
17 alcoholic beverages for on premises consumption to an applicant who
18 will locate as the proprietor, as owner or lessee, or both, of a restaurant
19 within an economic development area under IC 36-7-14 in:

20 (1) a town with a population of more than twenty thousand
21 (20,000); or

22 (2) a city with a population of more than twenty-seven thousand
23 (27,000) but less than twenty-seven thousand four hundred
24 (27,400);

25 located in a county having a population of more than ninety thousand
26 (90,000) but less than one hundred thousand (100,000). The
27 commission may issue not more than five (5) licenses under this
28 section to premises within a municipality described in subdivision (1)
29 and not more than five (5) licenses to premises within a municipality
30 described in subdivision (2). The commission shall conduct an auction
31 of the permits under IC 7.1-3-22-9, except that the auction may be
32 conducted at any time as determined by the commission.
33 Notwithstanding any other law, the minimum bid for an initial license
34 under this subsection is thirty-five thousand dollars (\$35,000), and the
35 renewal fee for a license under this subsection is one thousand three
36 hundred fifty dollars (\$1,350). Before the district expires, a permit
37 issued under this subsection may not be transferred. After the district
38 expires, a permit issued under this subsection may be renewed, and the

1 ownership of the permit may be transferred, but the permit may not be
2 transferred from the permit premises.

3 (i) After June 30, 2006, the commission may issue not more than
4 five (5) new three-way, two-way, or one-way permits to sell alcoholic
5 beverages for on-premises consumption to applicants, each of whom
6 must be the proprietor, as owner or lessee, or both, of a restaurant
7 located within a district, or not more than five hundred (500) feet from
8 a district, that meets all of the following requirements:

9 (1) The district is within an economic development area, an area
10 needing redevelopment, or a redevelopment district as established
11 under IC 36-7-14.

12 (2) A unit of the National Park Service is partially located within
13 the district.

14 (3) An international deep water seaport is located within the
15 district.

16 An applicant is not eligible for a permit under this subsection if, less
17 than two (2) years before the date of the application, the applicant sold
18 a retailers' permit that was subject to IC 7.1-3-22 and that was for
19 premises located within the district described in this subsection or
20 within five hundred (500) feet of the district. A permit issued under this
21 subsection may not be transferred. If the commission issues five (5)
22 new permits under this subsection, and a permit issued under this
23 subsection is later revoked or is not renewed, the commission may
24 issue another new permit, as long as the total number of active permits
25 issued under this subsection does not exceed five (5) at any time. The
26 commission shall conduct an auction of the permits under
27 IC 7.1-3-22-9, except that the auction may be conducted at any time as
28 determined by the commission.

29 **(j) After July 1, 2008, the commission may issue not more than**
30 **five (5) one, two, or three-way permits for the sale of alcoholic**
31 **beverages for on-premises consumption to an applicant who will**
32 **locate as the proprietor, as owner or lessee, or both, of a restaurant**
33 **within an economic development area as determined by resolution**
34 **of a city or town. The resolution must include findings that the**
35 **economic development area is:**

36 **(1) in an area needing retail redevelopment;**

37 **(2) in the process of being redeveloped or renovated to include**
38 **restaurants areas; or**

1 **(3) in an area being funded in part with grants or investments**
 2 **by a unit of government;**
 3 **and that the local economic development goals will be substantially**
 4 **enhanced by additional permits. The resolution must stipulate the**
 5 **boundaries of the economic development area and the number of**
 6 **permits that the commission may issue. A fully executed copy of the**
 7 **resolution must be filed with the commission. A permit issued**
 8 **under this subsection may not be issued to a tavern, as defined in**
 9 **section 15.9 of this chapter, or transferred to a location outside the**
 10 **economic development area. If the commission issues new permits**
 11 **under this subsection and a permit issued under this subsection is**
 12 **later revoked or is not renewed, the commission may issue another**
 13 **new permit, as long as the total number of permits issued under**
 14 **this subsection does not exceed five (5) at any time. An applicant**
 15 **for a permit under this subsection shall place the permit into use**
 16 **within twelve (12) months or the permit shall be subject to**
 17 **administrative revocation by the commission. The commission**
 18 **shall conduct an auction of the permits under IC 7.1-3-22-9, except**
 19 **that the auction may be conducted at any time as determined by**
 20 **the commission. Notwithstanding any other law, the minimum bid**
 21 **for a permit under this subsection is seventy-five thousand dollars**
 22 **(\$75,000), and the renewal fee for a permit under this subsection**
 23 **is two thousand dollars (\$2,000). If after the 2010 decennial census**
 24 **the city or town is authorized by the quota provisions of**
 25 **IC 7.1-3-22 to receive additional three-way permits, any three-way**
 26 **permits issued under this subsection must be subtracted from the**
 27 **additional three-way permits that the city or town may be**
 28 **authorized to receive under the quota provisions of IC 7.1-3-22.".**

29 Page 37, between lines 4 and 5, begin a new paragraph and insert:

30 "SECTION 75. IC 7.1-5-9-14 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. ~~Sale to~~
 32 ~~Non-Permittee Prohibited.~~ It is unlawful for the holder of a brewer's,
 33 distiller's, rectifier's, or a wholesaler's permit of any type to sell an
 34 alcoholic beverage to a person who does not hold an appropriate permit
 35 under this title. However, this section shall not apply to the sale of an
 36 alcoholic beverage to a consumer **or employee** as expressly authorized
 37 in this title."

38 Page 39, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 81. IC 35-46-1-10.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of ~~fifty dollars (\$50)~~ **two hundred fifty dollars (\$250)**.

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of ~~one hundred dollars (\$100)~~ **five hundred dollars (\$500)**.

(3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of ~~two hundred fifty dollars (\$250)~~ **one thousand dollars (\$1,000)**.

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of ~~five hundred dollars (\$500)~~ **two thousand dollars (\$2,000)**.

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the

1 laws of another state or the federal government showing that the
2 purchaser or recipient was of legal age to make the purchase.

3 (3) The appearance of the purchaser or recipient was such that an
4 ordinary prudent person would believe that the purchaser or
5 recipient was not less than the age that complies with regulations
6 promulgated by the federal Food and Drug Administration.

7 (d) It is a defense that the accused retail establishment sold or
8 delivered the tobacco to a person who acted in the ordinary course of
9 employment or a business concerning tobacco:

10 (1) agriculture;

11 (2) processing;

12 (3) transporting;

13 (4) wholesaling; or

14 (5) retailing.

15 (e) As used in this section, "distribute" means to give tobacco to
16 another person as a means of promoting, advertising, or marketing the
17 tobacco to the general public.

18 (f) Unless a person buys or receives tobacco under the direction of
19 a law enforcement officer as part of an enforcement action, a retail
20 establishment that sells or distributes tobacco is not liable for a
21 violation of this section unless the person less than eighteen (18) years
22 of age who bought or received the tobacco is issued a citation or
23 summons under section 10.5 of this chapter.

24 (g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
25 this section must be deposited in the Richard D. Doyle youth tobacco
26 education and enforcement fund (IC 7.1-6-2-6).

27 (h) A person who violates subsection (a) at least six (6) times in any

- 1 six (6) month period commits habitual illegal sale of tobacco, a Class
- 2 B infraction."
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1118 as introduced.)

and when so amended that said bill do pass.

Representative Van Haaften